IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (FORT WORTH DIVISION)

NEXTGEAR CAPITAL, INC. AND AUTOMOTIVE FINANCE CORPORATION,

Plaintiffs.

٧.

DRUIEN, INC. D/B/A LAWTON AUTO AUCTION A/K/A LAWTON CACHE AUTO AUCTION, LISA DRUIEN, MICHAEL VERNON GARRISON D/B/A ROCK HILL USED CARS, AND AUSTIN MICHAEL GARRISON A/K/A MIKE GARRISON D/B/A AUSTIN FINANCIAL SERVICES,

Defendants.

Civil Action No. 4:20-CV-959-BJ

NOTICE OF SUBPOENA COMMANDING THE PRODUCTION OF DOCUMENTS

NextGear Capital, Inc. and Automotive Finance Corporation, plaintiffs in the above-styled civil federal action, hereby give notice pursuant to FED. R. CIV. P. 45(a)(4) to all parties that it intends to serve the attached subpoena commanding the production of documents upon David Montanaro.

Respectfully submitted,

PADFIELD & STOUT, L.L.P. 420 Throckmorton Street, Suite 1210 Fort Worth, Texas 76102 817-338-1616 phone 817-338-1610 fax

/s/ Christopher V. Arisco

Alan B. Padfield State Bar I.D. # 00784712 abp@padfieldstout.com Christopher V. Arisco State Bar I.D. #24064830 carisco@padfieldstout.com

Attorneys for NextGear Capital, Inc. and Automotive Finance Corporation

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2021, I served a copy of the foregoing Notice of Subpoena Commanding The Production of Documents to Druien, Inc. and Lisa Druien, by and through their counsel of record, Joseph M. Vacek and Richard Tallini, of Bailey & Galyen at 1300 Summit Avenue, Suite 650, Fort Worth, Texas 76102, via ECF and/or e-mail at jvacek@galyen and rtallini@galyen.com, and defendants Michael Vernon Garrison, pro se, at 549 I-30 E., Sulphur Springs, Texas 75482, and Austin Michael Garrison, pro se, at 4658 I-30 E., Sulphur Springs, Texas 75482.

/s/ Christopher V. Arisco

Alan B. Padfield State Bar I.D. # 00784712 abp@padfieldstout.com Christopher V. Arisco State Bar I.D. #24064830 carisco@padfieldstout.com

Attorneys for NextGear Capital, Inc. and Automotive Finance Corporation AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

	Northern Dist	rict of	Texas
Druien, Inc. d/b/a Michael G	Plaintiff V. Lawton Auto Auction, Lisa Druien, Barrison and Austin Garrison Defendant SUBPOENA TO PRODUCE DOCUMI OR TO PERMIT INSPECTION OF DAVID MONTANATO AT 1664 Quiet Oa))) ENTS, F PRE	MISES IN A CIVIL ACTION
10.	David Montanaro at 1004 Quiet Oa	No Dr.,	Arroyo Grande, Gamornia 95420.
-	(Name of person to wh	nom this	subpoena is directed)
material:Documen	ts related to the sale/transfer of the vehicl , sign, have notarized, and return the attac	es ider ched bi ' symb	mit inspection, copying, testing, or sampling of the ntified in the attached Exhibit "A" Duces Tecum, and usiness records affidavit along with any responsive of in the business records affidavit must be complete. Date and Time:
1210, Fort	Worth, Texas 76102		04/10/2021 12:00 pm
other property poss	sessed or controlled by you at the time, da	te, and e prop	ermit entry onto the designated premises, land, or location set forth below, so that the requesting party erty or any designated object or operation on it. Date and Time:
Rule 45(d), relating	g to your protection as a person subject to poena and the potential consequences of n	a subp not doi	- Rule 45(c), relating to the place of compliance; oena; and Rule 45(e) and (g), relating to your duty to ag so. OR Attorney's signature
			The second of th
20 2	e-mail address, and telephone number of Finance Corporation	the att	orney representing (name of party) NextGear Capital, , who issues or requests this subpoena, are:
Christopher V. Aris	co, 420 Throckmorton Street, Suite 1210,	Fort V	/orth, Texas 76102, carisco@padfieldstout.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 4:20-CV-959-BJ

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this sub in (date)	bpoena for <i>(name of individual and title, if a</i>	any)	,
☐ I served the su	bpoena by delivering a copy to the na	amed person as follows:	
		on (date)	; or
☐ I returned the s	subpoena unexecuted because:		
		States, or one of its officers or agents, le, and the mileage allowed by law, in the	
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y fees are \$	for travel and \$	for services, for a total of \$	0.00
I declare under no	nalty of perjury that this information	is truo	
i deciare under pe	naity of perjury that this information	is true.	
te:			
		Server's signature	
		Printed name and title	*****
	W-5	Server's address	

Additional information regarding attempted service, etc.:

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action(Page 3)

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
 - (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- (B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
 - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- (B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- (A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- (B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- (C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- (D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
 - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- (B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT "A" DUCES TECUM

Documents and Records to be Produced:

Document Requests Related to 2004 F350 Super Duty, VIN # 1FTSW31P04EA21086

- 1. Produce all auction invoices, receipts, and statements related to the sale of the 2004 F350 Super Duty, VIN # 1FTSW31P04EA21086, which is identified in the Exhibit "B" Lawton Auto Auction invoice dated November 25, 2019.
- 2. Produce all written contracts, agreements, and any exhibits or attachments thereto with Druien Inc. d/b/a Lawton Auto Auction related to the sale by David Montanaro of the 2004 F350 Super Duty, VIN # 1FTSW31P04EA21086.
- 3. Produce all written contracts, agreements, and any exhibits or attachments thereto with Michael Garrison d/b/a Rock Hill Used Cars related to the sale by David Montanaro of the 2004 F350 Super Duty, VIN # 1FTSW31P04EA21086.
- 4. Produce all written contracts, agreements, invoices, receipts, certificates of title or title applications and documents, or other related documents reflecting the sale or transfer of ownership of the 2004 F350 Super Duty, VIN # 1FTSW31P04EA21086 to Rock Hill Used Cars as set forth in the attached Exhibit "C" Texas Certificate of Title.
- 5. Produce all written communications, correspondence, notes, e-mails, and/or text messages by and between David Montanaro and Michael Garrison d/b/a Rock Hill Used Cars related to the sale or transfer of the 2004 F350 Super Duty, VIN # 1FTSW31P04EA21086 from January 1, 2018, to present.
- 6. Produce all written communications, correspondence, notes, e-mails, and/or text messages by and between David Montanaro and Druien, Inc. d/b/a Lawton Auto Auction related to the sale or transfer of the 2004 F350 Super Duty, VIN # 1FTSW31P04EA21086 from January 1, 2018, to present.
- 7. Produce all written communications, correspondence, notes, e-mails, and/or text messages by and between David Montanaro and Lisa Druien related to the sale or transfer of the 2004 F350 Super Duty, VIN # 1FTSW31P04EA21086 from January 1, 2018, to present.
- 8. Produce all copies of checks (front and back) received by David Montanaro that correspond to payment from the sale of the 2004 F350 Super Duty, VIN # 1FTSW31P04EA21086 from January 1, 2018, to present.
- 9. Produce any monthly bank statements (redaction of confidential material permitted) identifying the receipt of money by David Montanaro that correspond to payment from the sale of the 2004 F350 Super Duty, VIN # 1FTSW31P04EA21086 from January 1, 2018, to present.

EXHIBIT "B"

Lawton Cache Auto Auction

INVOICE & BILL OF SALE

580-536-4645

Print Date: 11/25/2019
Print Time: 1:08 PM

1 Southwest 112th St. Lawton, OK 73505

ANNOUNCED COND	ITIONS OR COMMENTS:	unit# 01	0
BUYER(Purchaser):P Mike Garrison Rock Hill Used Cars 549 Interstate 30 East Sulphur Springs, TX 754	903-440-5557	Seller MO MO David Montanaro David Montanaro 1664 Quite Oaks Dr Arroyo Grande Oaks Dr, CA 93420	SALE#: 38501 DATE: 11/20/19 STATUS: SLD DRIVE: Yellow LANE
	MAKE FORD	(1) I hereby certify that to the best of my knowledge the reflects the amount of mileage in excess of its mechanics (2) I hereby certify that the odometer reading is NOT the WARNING - ODOMETER DISCREPANCY. Transferor's (Seller) signature) Transferee's (buyer) signature)	that you state the ete or providing tent, that the odometer miles and to the f the vehicle, unless odometer reading anical limits.

ALL SALES FINAL DAY OF SALE. It is understood and agreed, between the consignor, the purchaser and Lawton Cache Auto Auction is not responsible for fire, theft, or damage to the above described vehicle while on the premises before, during or after the sale. LAWTON CACHE AUTO AUCTION DOES NOT HAVE INSURANCE COVERING ANY VEHICLE. "This sale is solely a transaction between the buyer and the seller parties" ~ Subject to final handing and approving of the Auction. The buyer is expected to pay for any vehicle which he/she buys unless excused by the Auction. Please clear all items promptly after purchase. The Auction does not guarantee the mileage, year, model or factory warranty on any vehicle sold through this auction. Seller warrants that he/she has good negotiable title and that it is free and clear of all items and or encumbrances. Signatory parties agree that sale transaction is not complete until all drafts or checks have cleared and title is assigned to purchaser. Effective IMMEDIATELY, AS OF TODAY January 17, 2018, ALL SALES MUST be paid for the night of the Auction, with cash, check or a floor plan company. If NO payment is here at the time title arrives, a fee of \$25.00 will be added to your total daily.

EXHIBIT "C"

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MOTORCYCLE ENGINE NUMBER		ODOMETER DATE C	DOMETER READING
REGISTERED OWNER(S)		12/07/2003 NACTUAL MILEAGE	53 MI
MONTANARO DAVII 1664 QUIET OAKS			
ARROYO GRANDE	SS OSPERAT		5 (1) (2) (2) (3) (4) (4) (4) (5) (5)
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IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

NEXTGEAR CAPITAL, INC. AND	
AUTOMOTIVE FINANCE	
CORPORATION,)
Plaintiffs, v.)) Adv. Pro. No. 18-03393
DRUIEN, INC. D/B/A LAWSTON) Adv. Pro. No. 18-03393
AUTO AUCTION, LISA DRUIEN,)
MICHAEL GARRISON D/B/A ROCK)
HILL USED CARS, AND AUSTIN)
GARRISON D/B/A AUSTIN FINANCIAL)
SERVICES,)
)
Defendants.)
BUSINESS R	RECORDS AFFIDAVIT
STATE OF *	§
COLNITY OF *	8
COUNTY OF *	8

BEFORE ME, the undersigned official, on this day personally appeared David Montanaro, known to me to be a credible person and whom, after having been by me first duly sworn, under oath deposed and stated the following:

- 1. My name is David Montanaro. I am over eighteen years old, I understand the nature of this oath, and I am otherwise competent to testify as to the matters stated in this Affidavit. This testimony is based on my own personal knowledge and the facts stated herein are true and correct. I have also personally reviewed each of the documents attached hereto.
- 2. I am a custodian of the records concerning my business dealings with Michael Garrison d/b/a Rock Hill Used Cars and/or Druien, Inc. d/b/a Lawton Auto Auction. Attached hereto are *_____ pages of records. These said pages of records are kept by me in the regular course of

business, and it was the regular course of my business for an employee or representative with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

	Further affiant sayeth not.	
	Executed this the * day of *	, 2021.
		*
		By: David Montanaro
*		before me by the said David Montanaro, on this the _, 2021, to certify which witness my hand and seal of
office		
		Notary Public In and For Said